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## SENATE BILL No. 305

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2; IC 16-28.

**Synopsis:** State department of health office of quality assurance. Establishes the office of quality assurance within the state department of health to perform the following duties regarding nursing homes: (1) Administer the informal dispute resolution process. (2) Appoint administrative law judges. (3) Receive and review complaints about inspectors or inspection teams and individual complaint investigation results. (4) Conduct quality assurance reviews of the state department's complaint prioritization, intake, and investigation procedure. Requires the office to provide reports to the select joint commission on Medicaid oversight concerning inspections of nursing homes. Requires nursing home inspectors to meet certain criteria and perform certain tasks during a licensure inspection.

**Effective:** July 1, 2002.

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**Miller**

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January 7, 2002, read first time and referred to Committee on Health and Provider Services.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 305

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-18-2-202.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2002]: **Sec. 202.5. "Licensure inspection", for**  
4 **purposes of IC 16-28-4.5, means any inspection or survey of a**  
5 **health facility conducted by the state department.**

6 SECTION 2. IC 16-18-2-253.7 IS ADDED TO THE INDIANA  
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2002]: **Sec. 253.7. "Nursing home report card**  
9 **score", for purposes of IC 16-28-4.5-1, has the meaning set forth in**  
10 **IC 16-28-4.5-1(a).**

11 SECTION 3. IC 16-18-2-254.5, AS ADDED BY P.L.52-1999,  
12 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2002]: Sec. 254.5. **(a) "Office", for purposes of IC 16-19-13,**  
14 **refers to the office of women's health established by IC 16-19-13.**

15 **(b) "Office", for purposes of IC 16-28-15, refers to the office of**  
16 **quality assurance established by IC 16-28-15-2.**

17 SECTION 4. IC 16-28-4.5 IS ADDED TO THE INDIANA CODE



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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2002]:

**Chapter 4.5. Licensure Inspections of Health Facilities**

**Sec. 1. (a)** As used in this section, "nursing home report card score" refers to the score given a health facility under a program developed by the state department to compile data collected during surveys of health facilities into information that may be used by consumers to choose a health facility.

**(b)** An individual may not participate in a licensure inspection of a health facility as an inspector unless the individual, after being hired as an employee of the state department:

**(1)** has been assigned to:

**(A)** a licensed health facility for at least:

**(i)** two (2) days; or

**(ii)** the equivalent number of hours;

to observe actual daily operations at the health facility;  
and

**(B)** shadow a local long term care ombudsman for:

**(i)** one (1) day; or

**(ii)** the equivalent number of hours; and

**(2)** has received:

**(A)** at least six (6) hours of Alzheimer's disease and dementia specific training; and

**(B)** program orientation from a representative of:

**(i)** the long term care ombudsman program; and

**(ii)** the adult protective services program.

**(c)** An individual described in subsection (b) may not be assigned to a Medicaid or Medicare certified facility with a state department nursing home report card score that falls below the top twenty-five percent (25%) of all scores.

**Sec. 2.** An individual may not participate in a licensure inspection of a health facility as an inspector if the individual or a member of the individual's immediate family:

**(1)** has or has had a financial interest in the health facility within the previous five (5) years;

**(2)** is or has been employed by:

**(A)** the health facility;

**(B)** the owner corporation; or

**(C)** the management corporation;

within the previous five (5) years; or

**(3)** has served as a consultant for the health facility within the previous five (5) years.

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1       **Sec. 3.** An inspector may not be a member of a trade association  
2 of licensed health facilities.

3       **Sec. 4. (a)** During a licensure inspection of a health facility, the  
4 health facility administrator, the director of nursing, and corporate  
5 level staff may record their conversations with any member of the  
6 inspection team at closed door conferences held throughout the  
7 licensure inspection, subject to the following requirements:

8           (1) The inspection team leader must be notified in writing that  
9 the taping will occur.

10          (2) Copies of each tape recording must be provided to the  
11 inspection team leader at the conclusion of the conference.

12       **(b)** All taped conversations are considered to be part of the  
13 individual inspector's notes and documentation.

14       **Sec. 5. (a)** Each inspector involved in an inspection must sign an  
15 affidavit that states as follows:

16           "I swear under penalties of perjury that, to the best of my  
17 knowledge and belief, the statements that I have written in  
18 this document are true, accurate, and complete."

19       **(b)** The affidavits described in subsection (a) must be attached  
20 to a statement of deficiencies.

21       **Sec. 6. (a)** At the conclusion of a licensure inspection of a health  
22 facility, at least one (1) individual who was a member of the  
23 inspection team shall hold an exit conference and provide the  
24 health facility with preliminary findings of the results of the  
25 inspection, including:

26           (1) an understanding of what must be done to correct any  
27 deficiencies; and

28           (2) the relative seriousness of the deficiencies.

29       **(b)** The following persons must be invited to an exit conference:

30           (1) A member of the resident council.

31           (2) A member of the family council, if a family council exists.

32           (3) The local long term care ombudsman.

33           (4) The complainant, if:

34               (A) the exit conference is the result of a licensure  
35 inspection related to a complaint; and

36               (B) the identity of the complainant is known.

37       **Sec. 7.** An individual who participates in a licensure inspection  
38 of a health facility as an inspector may not cite a health facility for  
39 the facility's clinical protocols or best practice standards unless the  
40 individual has consulted with a clinical expert in long term care  
41 appointed by the state department.

42       **Sec. 8. (a)** Not less than semiannually, the state department shall

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provide joint training sessions with:

- (1) health facilities;
- (2) individuals who conduct health facility licensure inspections; and
- (3) representatives of the state long term care ombudsman program.

(b) The primary topic of the joint training sessions required under subsection (a) must be the subject matter of at least one (1) of the ten (10) most frequently issued federal citations in Indiana during the preceding calendar year.

Sec. 9. (a) An individual who participates as an inspector in a licensure inspection of a health facility pursuant to a complaint must interview the complainant, if known, before investigating the complaint. However, the individual may commence the investigation without first interviewing the complainant if the individual is unable to contact the complainant after making at least three (3) attempts.

(b) A letter of notification to a complainant regarding the results of an investigation must inform the complainant:

- (1) that a copy of the investigative report of the results of the licensure inspection related to the complaint is available upon request; and
- (2) how the complainant may request a review of the results of the investigation.

Sec. 10. (a) During an annual or follow-up licensure inspection, an inspector shall schedule times to meet with family members of residents of the facility.

(b) A posting that announces that the licensure inspection team is in the building for a meeting with family members described in subsection (a) must include the time and location that a member of the inspection team will be available each day to speak with family members, either individually or with other family members.

SECTION 5. IC 16-28-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) Hearings under this article shall be conducted in accordance with IC 4-21.5. Except for hearings held on the adoption of rules, an administrative law judge must meet the following conditions:

- (1) Be admitted to the practice of law in Indiana.
- (2) Not be a member of the council or an employee of the state.
- (3) Be appointed by the office of quality assurance established by IC 16-28-15-2.

(b) A health facility shall pay the costs of appointing an

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administrative law judge if the administrative law judge finds in favor of the state. However, if the administrative law judge finds in favor of the health facility, the state shall pay the costs of appointing the administrative law judge.

SECTION 6. IC 16-28-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

**Chapter 15. Office of Quality Assurance**

**Sec. 1.** As used in this chapter, "office" refers to the office of quality assurance established by section 2 of this chapter.

**Sec. 2.** (a) The office of quality assurance is established within the state department.

(b) The state health commissioner shall appoint a director who is responsible for administering the office.

**Sec. 3.** (a) The office has the following duties and responsibilities:

(1) To administer the informal dispute resolution process required by 42 CFR 488.331 to allow a health facility to dispute a survey finding.

(2) To appoint administrative law judges needed under IC 16-28-10.

(3) To receive and review complaints from health facilities concerning inspectors or inspection teams and individual complaint investigation results.

(4) To conduct quality assurance reviews on the state department's complaint intake, prioritization, and complaint inspection process.

(b) A review conducted under subsection (a)(3) must include a discussion with the:

(1) inspector or the inspection team leader; and

(2) person filing the complaint.

(c) The office shall:

(1) prepare a report of the result of a review conducted under subsection (a)(3); and

(2) provide a copy of the report to:

(A) the state department's long term care division; and

(B) the person who requested the review.

The report is a part of the public file of the health facility.

**Sec. 4.** When conducting informal dispute resolutions, the office shall:

(1) be given access to all inspection notes and documentation; and



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(2) if necessary, interview the individual inspectors.

**Sec. 5. The state health commissioner shall organize the office to assure that the office operates independently from:**

- (1) the office of legal affairs and policy; and
- (2) the long term care division.

**Sec. 6. An employee assigned to the office must not have any conflict of interest with a health facility or a trade association of health facilities, including:**

- (1) ongoing employment in, a contractual relationship with, or participation in the management of a health facility;
- (2) an ongoing financial relationship with a health facility or a long term care service provider; or
- (3) an ongoing membership in a trade association of health facilities.

**Sec. 7. An individual may not be assigned to an informal dispute resolution for a health facility if the individual or a member of the individual's immediate family:**

- (1) has or has had a financial interest in the health facility within the previous five (5) years;
- (2) is or has been employed by:
  - (A) the health facility;
  - (B) the owner corporation; or
  - (C) the management corporation;
 within the previous five (5) years; or
- (3) has served as a consultant for the health facility within the previous five (5) years.

**Sec. 8. The office may adopt rules under IC 4-22-2 necessary to implement this chapter.**

**SECTION 7. [EFFECTIVE JULY 1, 2002] (a) The office of quality assurance established within the state department of health by IC 16-28-15-2, as added by this act, shall report quarterly to the select joint commission on Medicaid oversight established by IC 2-5-26-3 concerning licensure inspections of health facilities under IC 16-28. The report must include the following information:**

- (1) The number of:
  - (A) inspections that were completed;
  - (B) citations issued per inspection, including the scope and severity of the citations by the type of inspection;
  - (C) night and weekend inspections;
  - (D) complaints received, investigated, and substantiated;
 and

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- 1 (E) complaints in each priority level.
- 2 (2) The department's response time to investigate complaints.
- 3 (3) A summary of the citations that have been appealed to:
- 4 (A) an informal dispute resolution process; or
- 5 (B) an administrative law judge;
- 6 and the results of the appeals.
- 7 (4) An analysis of citations by scope and severity by survey
- 8 region.
- 9 (5) A summary of the results of the review of complaints
- 10 received regarding inspectors or inspection teams and
- 11 individual complaint investigation results.
- 12 (6) A comparison of the statistics in subdivisions (1) through
- 13 (5) with similar statistics, where available, for:
- 14 (A) other states in Region V of the federal Centers for
- 15 Medicare and Medicaid Services; and
- 16 (B) the country as a whole.
- 17 (b) This SECTION expires July 1, 2007.
- 18 SECTION 8. [EFFECTIVE JULY 1, 2002] (a) The state
- 19 department of health established by IC 16-19-1-1, in consultation
- 20 with health facility associations, a health facility medical directors
- 21 association, the state long term care ombudsman, consumer
- 22 advocacy organizations, and the federal Centers for Medicare and
- 23 Medicaid Services, shall clarify the following terms to ensure
- 24 consistency in the inspections of health facilities by the state
- 25 department of health under Title XVIII and Title XIX of the
- 26 federal Social Security Act:
- 27 (1) Immediate jeopardy.
- 28 (2) Harm.
- 29 (3) Potential harm.
- 30 (4) Avoidable.
- 31 (5) Unavoidable.
- 32 (6) Isolated.
- 33 (7) Pattern.
- 34 (8) Widespread.
- 35 (b) This SECTION expires July 1, 2003.

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